

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SIMON THORNTON,

Plaintiff,

v.

DEB K., et al.,

Defendants.

No. 2:22-cv-01882 AC

ORDER

Plaintiff, a state prisoner proceeding pro se, seeks relief pursuant to 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

I. Application to Proceed In Forma Pauperis

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). ECF No. 2. Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time

1 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
2 § 1915(b)(2).

3 II. Statutory Screening of Prisoner Complaints

4 The court is required to screen complaints brought by prisoners seeking relief against "a
5 governmental entity or officer or employee of a governmental entity." 28 U.S.C. § 1915A(a).
6 The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are
7 "frivolous, malicious, or fail[] to state a claim upon which relief may be granted," or that "seek[]
8 monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(b).

9 A claim "is [legally] frivolous where it lacks an arguable basis either in law or in fact."
10 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
11 Cir. 1984). "[A] judge may dismiss . . . claims which are 'based on indisputably meritless legal
12 theories' or whose 'factual contentions are clearly baseless.'" Jackson v. Arizona, 885 F.2d 639,
13 640 (9th Cir. 1989) (quoting Neitzke, 490 U.S. at 327), superseded by statute on other grounds as
14 stated in Lopez v. Smith, 203 F.3d 1122, 1130 (9th Cir. 2000). The critical inquiry is whether a
15 constitutional claim, however inartfully pleaded, has an arguable legal and factual basis.
16 Franklin, 745 F.2d at 1227-28 (citations omitted).

17 "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the
18 claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of
19 what the . . . claim is and the grounds upon which it rests.'" Bell Atl. Corp. v. Twombly, 550
20 U.S. 544, 555 (2007) (alteration in original) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
21 "Failure to state a claim under § 1915A incorporates the familiar standard applied in the context
22 of failure to state a claim under Federal Rule of Civil Procedure 12(b)(6)." Wilhelm v. Rotman,
23 680 F.3d 1113, 1121 (9th Cir. 2012) (citations omitted). In order to survive dismissal for failure
24 to state a claim, a complaint must contain more than "a formulaic recitation of the elements of a
25 cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the
26 speculative level." Twombly, 550 U.S. at 555 (citations omitted). "[T]he pleading must contain
27 something more . . . than . . . a statement of facts that merely creates a suspicion [of] a legally
28 cognizable right of action." Id. (alteration in original) (quoting 5 Charles Alan Wright & Arthur

1 R. Miller, Federal Practice and Procedure § 1216 (3d ed. 2004)).

2 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to
3 relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting
4 Twombly, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
5 content that allows the court to draw the reasonable inference that the defendant is liable for the
6 misconduct alleged.” Id. (citing Twombly, 550 U.S. at 556). In reviewing a complaint under this
7 standard, the court must accept as true the allegations of the complaint in question, Hosp. Bldg.
8 Co. v. Trs. of the Rex Hosp., 425 U.S. 738, 740 (1976) (citation omitted), as well as construe the
9 pleading in the light most favorable to the plaintiff and resolve all doubts in the plaintiff’s favor,
10 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969) (citations omitted).

11 III. Complaint

12 At all times relevant to the allegations in the complaint, plaintiff was a prisoner at Mule
13 Creek State Prison. Plaintiff names Deb K., a mail room employee, and, J. Weiss, the Associate
14 Warden of the prison, as the defendants in this action.

15 Plaintiff alleges that between February and August, 2022, various items of his non-legal
16 incoming mail were disallowed by defendants because they did not comply with various prison
17 regulations. Plaintiff received a completed CDCR Form 1819 on the various dates describing
18 how the mail violated specific prison regulations. Plaintiff disputes that the confiscated mail
19 violated prison policies.

20 Plaintiff seeks declaratory and injunctive relief as well as monetary and punitive damages.

21 IV. Applicable Legal Standards

22 Under the First Amendment, prisoners have a right to send and receive mail. Witherow v.
23 Paff, 52 F.3d 264, 265 (9th Cir. 1995) (per curiam). However, a prison may adopt regulations or
24 practices for inmate mail which limit a prisoner’s First Amendment rights as long as the
25 regulations are “reasonably related to legitimate penological interests.” Turner v. Safley, 482
26 U.S. 78, 89, (1987). “When a prison regulation affects outgoing mail as opposed to incoming
27 mail, there must be a ‘closer fit between the regulation and the purpose it serves.’” Witherow, 52
28 F.3d at 265 (quoting Thornburgh v. Abbott, 490 U.S. 401, 412 (1989)). Courts have also

1 afforded greater protection to legal mail than non-legal mail. See Thornburgh, 490 U.S. at 413.
2 Isolated incidents of mail interference or tampering will not support a claim under section 1983
3 for violation of plaintiff's constitutional rights. See Davis v. Goord, 320 F.3d 346, 351 (2d. Cir.
4 2003); Gardner v. Howard, 109 F.3d 427, 431 (8th Cir. 1997); Smith v. Maschner, 899 F.2d 940,
5 944 (10th Cir. 1990); see also Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999) (emphasizing
6 that a temporary delay or isolated incident of delay of mail does not violate a prisoner's First
7 Amendment rights). Generally, such isolated incidents must be accompanied by evidence of an
8 improper motive on the part of prison officials or result in interference with an inmate's right of
9 access to the courts or counsel in order to rise to the level of a constitutional violation. See Smith,
10 899 F.2d at 944.

11 V. Failure to State a Claim

12 Having conducted the screening required by 28 U.S. § 1915A, the court finds that the
13 allegations in the complaint do not state any viable claim for relief. First and foremost, plaintiff
14 points to isolated incidents of mail confiscation. It does not appear to the court based on the
15 allegations in the complaint that these instances rise to the level of a First Amendment violation.
16 See Crofton v. Roe, 170 F.3d 957, 961 (9th Cir. 1999). Moreover, the complaint is deficient
17 because plaintiff does not dispute that the prison regulations at issue have a legitimate penological
18 purpose. See Turner v. Safley, 482 U.S. 78, 89, (1987). He merely contends that his specific
19 items of mail did not fall within that penological purpose. That is not sufficient to state a First
20 Amendment violation. Additionally, the specific incidents of mail confiscation referenced in the
21 complaint are not accompanied by any allegations that defendants' actions were based on an
22 improper motive. See Smith, 899 F.2d at 944. For all these reasons, the complaint fails to state a
23 claim upon which relief may be granted. See 28 U.S.C. § 1915A(b)(1).

24 VI. Leave to Amend

25 Since the complaint does not state any cognizable claims for relief, plaintiff will be given
26 an opportunity to file an amended complaint. If plaintiff chooses to file an amended complaint,
27 he must demonstrate how the conditions about which he complains resulted in a deprivation of his
28 constitutional rights. Rizzo v. Goode, 423 U.S. 362, 370-71 (1976). The complaint must also

1 allege in specific terms how each named defendant is involved. Arnold v. Int'l Bus. Machs.
2 Corp., 637 F.2d 1350, 1355 (9th Cir. 1981). There can be no liability under 42 U.S.C. § 1983
3 unless there is some affirmative link or connection between a defendant's actions and the claimed
4 deprivation. Id.; Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, "[v]ague and
5 conclusory allegations of official participation in civil rights violations are not sufficient." Ivey v.
6 Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982) (citations omitted).

7 Plaintiff is also informed that the court cannot refer to a prior pleading in order to make
8 his amended complaint complete. Local Rule 220 requires that an amended complaint be
9 complete in itself without reference to any prior pleading. This is because, as a general rule, an
10 amended complaint supersedes any prior complaints. Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
11 1967) (citations omitted), overruled in part by Lacey v. Maricopa County, 693 F.3d 896, 928 (9th
12 Cir. 2012) (claims dismissed with prejudice and without leave to amend do not have to be re-pled
13 in subsequent amended complaint to preserve appeal). Once plaintiff files an amended complaint,
14 any previous complaints no longer serve any function in the case. Therefore, in an amended
15 complaint, as in an original complaint, each claim and the involvement of each defendant must be
16 sufficiently alleged.

17 VII. Plain Language Summary of this Order for a Pro Se Litigant

18 Your request to proceed in forma pauperis is granted. That means you do not have to pay
19 the entire filing fee now. You will pay it over time, out of your trust account.

20 The court has reviewed your complaint and determined that it does not state a claim
21 against any defendant. Therefore, it will not be served on defendants. You may amend your
22 complaint to try to fix the problems. In order to do so, the court has provided you with the
23 relevant legal standards governing your potential claims.

24 **In response to this order, you have two options: 1) do nothing, which will result in**
25 **the eventual dismissal of your case for failing to prosecute; or, 2) file an amended complaint**
26 **to try to fix the problems described in this order.**

27 If you choose to file an amended complaint, it must include all claims you want to bring.
28 Once an amended complaint is filed, the court will not look at any information in the original

1 complaint. Any claims and information not in the amended complaint will not be considered.

2 In accordance with the above, IT IS HEREBY ORDERED that:

3 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is GRANTED.

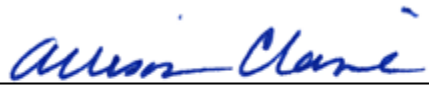
4 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff
5 is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C.
6 § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the
7 appropriate agency filed concurrently herewith.

8 3. Plaintiff's complaint fails to state a claim upon which relief may be granted, see 28
9 U.S.C. § 1915A, and will not be served.

10 4. Within thirty days from the date of service of this order, plaintiff may file an amended
11 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil
12 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket
13 number assigned this case and must be labeled "First Amended Complaint." Failure to file an
14 amended complaint in accordance with this order will result in a recommendation that this action
15 be dismissed.

16 5. The Clerk of the Court is directed to send plaintiff a copy of the prisoner complaint
17 form used in this district.

18 DATED: April 9, 2024

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20 ALLISON CLAIRE
21 UNITED STATES MAGISTRATE JUDGE
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